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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,297	07/18/2003	Katie Mulich	34127	3412

7590 12/26/2003
Hovey Williams LLP
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EXAMINER

SWIATEK, ROBERT P

ART UNIT PAPER NUMBER

3643

DATE MAILED: 12/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/623,297	MULICH ET AL.	
	Examiner	Art Unit	
	Robert P. Swiatek	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) = . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Trombly (US 4,630,744). Although not shown, the Trombly container sidewall includes markings or indicia (see column 2, lines 25, 26). Applicants' statement of intended use has not been given weight inasmuch as an animal paw *could* be inserted into the Trombly container. Since animal paws come in a multitude of sizes, the rim of the Trombly container is considered to be of a size so as to be sealable with an inserted animal paw of one size or another.

Claims 1, 2, 4-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Martinot (US 438,931). The open end of the Martinot foot bath is deemed to be of a size for receiving and sealing to a pet's paw inasmuch as animal paws come in a wide range of sizes. As to claim 2, inwardly extending teats 11 of Martinot are considered to constitute cleaning elements capable of brushing detritus from a inserted paw; the strap or drawstring provided about the leg section 12 of Martinot (not shown, but see page 1, lines 37-42, of Martinot) is considered to be both an identifying marking (its particular configuration or shape would be identifiable to the owner) as well as a gripping element by which the bath could be lifted. With regard to claim 6, the teats 11 of Martinot are capable of being removed as by cutting or grinding.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martinot in view of MacLeod. While the Martinot cleaning elements lack a sponge, it would have been obvious to one skilled in the art to provide the Martinot bath with a sponge, in view of the patent to MacLeod that a sponge positioned about the inner sidewall of a fluid container permits a sealable fit with an inserted limb (see column 3, lines 47-49, of MacLeod).

Claims 9, 12, 13, 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martinot in view of Claycomb et al. (US 3,378,004: Ref. D on PTO-1449). The upper end of the Martinot foot bath is not fluted. It would have been obvious to one skilled in the art to flute the upper end of the Martinot bath, as shown in Figure 4 of Claycomb et al., in order to enable easier insertion of a foot into the bath. With respect to claims 12, 18, the precise dimensions of the Martinot foot bath and the use of a transparent material in its construction would have been obvious to one skilled in the art wishing it to be capable of use with a range of individuals and permit viewing of an inserted foot (or paw) during the bathing process, respectively.

Claims 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martinot. The precise dimensions of the Martinot foot bath and the use of a transparent material in its construction would have been obvious to one skilled in the art wishing it to be capable of use with a range of individuals and permit viewing of an inserted foot (or paw) during the bathing process, respectively.

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Claims 14, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martinot in view of Claycomb et al. as applied to claim 12 above, and further in view of MacLeod. While the bath of the combination Martinot as modified by Claycomb et al. lacks an internal sponge, it would have been obvious to one skilled in the art to provide it with such a sponge, in view of the patent to MacLeod that a sponge positioned about the inner sidewall of a fluid container permits a sealable fit with an inserted limb (see column 3, lines 47-49, of MacLeod).

The patents to O'Brian et al. (US 874,983), Martindell et al. (US 1,970,465), Henley (US 4,583,530), and Schwartz (US 5,758,370) have been cited to provide additional examples of bath devices.

RPS: ©703/308-2700
19 December 2003

Robert P. Swiatek

ROBERT P. SWIATEK
PRIMARY EXAMINER
ART UNIT ~~383~~ 3643